

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	NSD File No. L-99-34
Provisions of the Telecommunications)	DA 01-1967
Act of 1996)	

**SPRINT CORPORATION'S
REPLY COMMENTS ON PETITIONS FOR
DECLARATORY RULING, RECONSIDERATION,
AND/OR CLARIFICATION**

Pursuant to the Common Carrier Bureau's public notice, released August 20, 2001,¹ Sprint Corporation ("Sprint") respectfully files these reply comments on the Petitions for Declaratory Ruling, Reconsideration, and/or Clarification of the Payphone Compensation Second Order on Reconsideration, FCC 01-109("order").² Sprint makes this submission on behalf of subsidiaries that include a substantial payor of payphone compensation and a recipient of such compensation for approximately 40,000 payphones.

¹ Public Notice, **DA 01-1967**, 66 Fed. Reg. 46,793 (September 7, 2001).

The petitions were filed by Bulletins, WorldCom, Inc., AT&T Corp., and Global Crossing Telecommunications, Inc. Bulletins, Petition for Clarification (filed April 16, 2001); AT&T Petition for Clarification and/or Reconsideration (May 29, 2001); Global Crossing, Petition for Reconsideration and Clarification (May 29, 2001); WorldCom, Inc., Petition for Declaratory Ruling and Petition for Reconsideration (May 29, 2001). Separately, WorldCom filed an Opposition to Global Crossing's petition (June 8, 2001).

Sprint believes the new payphone compensation rules ("New Rules")³ adopted in the Commission's April 5, 2001 order⁴ were flawed -- procedurally and substantively -- from the outset. For that reason, Sprint filed for judicial review of the order and requested a stay of the New Rules.⁵ The comments filed on October 9, 2001 underscore that view.

The New Rules put the first-switch carriers in an untenable position. The original payphone rules acknowledged that IXC networks were not designed to track calls handed off to SBRs.⁶ None of the major first-switch IXCs have the means to track SBRs' calls to completion after receiving answer supervision from the reseller's switch.⁷ In addition, it is neither economically nor technically feasible to integrate SBR call completion data into

³ The New Rules impose responsibility for compensating payphone service providers ("PSPs") on the first facilities-based interexchange carrier ("IXC") receiving a coinless payphone call, even when the call is routed to a switch-based reseller ("SBR"). They also require IXCs to track all coinless payphone calls routed to SBRs to determine if they are completed and thus compensable to PSPs.

⁴ Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Second Order on Recon.* (Apr. 5, 2001) ("Order"). The New Rules were published in the Federal Register on April 27, 2001. 66 Fed. Reg. 21,105.

⁵ Request of Sprint Corp. for a Stay of the Second Order on Reconsideration and Revised Final Rules Pending Judicial Review (filed May 25, 2001) ("Sprint Request for Stay"); Motion for a Stay Pending Review, *Sprint Corp. v. FCC, et al.*, No. 01-1266 (D.C. Cir.) (filed June 12, 2001). The Commission denied Sprint's request for a stay on July 26, 2001 (DA 01-1784, CCB), and the Court of Appeals denied Sprint's motion for a stay on August 6, 2001.

⁶ Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Order on Reconsideration*, Docket No. 96-128, 11 FCC Rcd. 20,541 (1996) ("First Payphone Order").

⁷ AT&T Petition at 3; Global Crossing Petition at 4; WorldCom Petition at 3; Sprint Request for Stay at 17-18.

IXC tracking and compensation systems.⁸ Faced with the New Rules' mandate that the first-switch IXC ensure that PSPs are compensated for all completed calls, Sprint -- like AT&T and WorldCom -- has no choice but to compensate PSPs for all calls routed to SBRs on which it receives answer supervision from the SBR, whether or not they ultimately reach a called party.⁹

The order and the New Rules recognized that IXCs should be permitted to pass through the costs of compensating PSPs and of tracking and reporting SBRs' dial-around calls. Order at ¶ 21; 47 C.F.R. Section 64.1310(b). In opposing Sprint's motion to stay, the Commission told the court, "costs in implementing any new systems or complying with any new requirements ... are fully recoverable from Sprint's reseller customers." In comments filed October 9, however, both SBRs and the RBOC PSPs oppose the first-switch IXCs' right to charge back to SBRs all the coinless calls on which payment to PSPs is made. Even ASCENT -- which previously has supported a shift in the tracking and compensation burden to the first-switch carrier, while conceding that first-switch

⁸ Some SBRs claim that IXCs could easily develop new call tracking, reporting, and compensation technologies. The major IXCs, however, all agree that developing and operating such new systems, even if ever technically feasible, would generate costs out of proportion to their intended benefits. AT&T Comments at 2, AT&T Petition at 3; WorldCom Comments at 2, 4.

⁹ Like WorldCom and AT&T, Sprint cannot integrate call set-up time into its call tracking and compensation system. AT&T Comments at 1; WorldCom Opposition at 2. Thus, Global Crossing's proposed timing surrogate is not a workable solution, either.

¹⁰ Opposition to Motion for Stay, Sprint v. FCC, et al., at 17 (filed June 22, 2001) (noting further that "Sprint ... is free to enforce the customer's obligations or terminate service for nonpayment.").

camers do not know whether SBR calls are completed to an end user'' -- now argues that IXC's must absorb all costs except compensation for calls SBRs report are successful.¹² First-switch camers like Sprint -- and AT&T, Global Crossing, and WorldCom -- cannot tell which calls are compensable, and so are forced to overcompensate. The SBRs argue that paying for any but completed calls will place them at a competitive disadvantage against integrated carriers and switchless resellers.¹³ Sprint understands their concern, but if the FCC compels the first-switch IXC's, as a practical matter, to incur these costs, then the order correctly provides that the IXC's can pass those costs through to the SBRs they serve.

The New Rules allow SBRs to make arrangements to compensate PSPs directly. See Section 64.1300(b) of the Rules. However, this alternative is illusory, because the New Rules condition this option on agreement by the PSPs. Id. This presents yet another practical implementation difficulty. As Sprint explained in its motion for stay,¹⁴ and contrary to the claims of some SBRs, '' it is also not feasible to monitor and integrate into

¹¹ See *Flying J, Inc. and TON Services, Inc. v. Sprint Communications Co., et al. and MCI WorldCom Communications Inc., et al.*, CCB/CPD File No. 00-04, Reply Comments of the Association of Communications Enterprises at 3,5 (filed and served May 22,2000).

¹² ASCENT Comments at 13. The SBRs also object to covering the burden of reimbursing the costs of tracking and reporting coinless calls. Telstar Comments at 13-14; IPCA Comments at 49-50; IDT Comments at 33. They realize if IXC's developed and implemented such new technology, it would be expensive. E.g., Flying J Comments at 13; IDT Comments at 47.

¹³ IPCA Comments at 8; IDT Comments at 25; Telstar Comments at 11-13.

¹⁴ See Sprint Request for Stay at 18-19, Declaration of Philip D. Bryde at ¶¶ 21-23.

¹⁵ E.g., CommuniGroup Comments at 7. Other SBRs "recognize[] the validity of underlying carriers' concern regarding the difficulty and expense of tracking compensable calls." Ad Hoc Resellers Comments at 3.

a first-switch IXC's compensation system various individual arrangements SBRs may have with particular PSPs. Unless an SBR has direct reporting and compensation agreements with all PSPs,¹⁶ it is administratively impracticable for Sprint to keep track of arrangements between each of its SBRs and the 1,300 entities (including PSP clearinghouses) to which Sprint pays compensation each quarter.¹⁷ This is true for other IXCs, as well.¹⁸ Unfortunately, it is doubtful whether all PSPs will agree, or will have an incentive to agree, to receive compensation directly from SBRs if ~~an~~ unrealistic FCC order promotes overcompensation to them by the first-switch carrier.

The Commission conducted a flawed rulemaking, which yielded an unworkable rule. If an IXC must, as a practical matter, pay for all SBR calls on which it receives answer supervision from the SBR, the Commission should not interfere with the IXC's right to recover its actual dial-around compensation and administrative costs from its SBRs. If an SBR believes it is cheaper to track and pay for its own completed calls, then it should have the right to do so. However, if its underlying IXC is unable to track and pay only some PSPs on behalf of the SBR, the Commission should not interfere with the IXC's right to protect itself by insisting that the SBR enter into direct relationships with all PSPs. If some IXCs are able to accommodate partial SBR-PSP relationships (while fulfilling their obligation to pay the remaining PSPs for the SBR's calls), those IXCs presumably will gain the SBR's business.

¹⁶ WorldCom proposes to assign tracking and payment obligations to those SBRs that obtain approval from the eleven largest PSPs or PSP aggregators, accounting for "approximately 90 percent" of the nation's PSPs. WorldCom Comments at 10 & Exh. 1. WorldCom's approach leaves the question of how remaining PSPs are to be compensated.

¹⁷ Bryde Declaration at ¶¶ 32-36.

¹⁸ WorldCom Petition at **3-4**; WorldCom Comments at 10-11.

This approach would not erase the unlawful character of the rulemaking. It is merely the least awkward approach possible within the outlines of the FCC's flawed order. This flexible approach would at least allow IXC's and SBR's to innovate and may help lessen some of the arbitrary burdens imposed by the New Rules. The FCC has recognized in these proceedings that it should not "require a standardized technology or methodology for tracking calls,"¹⁹ and Sprint believes flexibility in implementing dial-around compensation could benefit IXC's, SBR's, and PSP's.²⁰ If the FCC believes this approach is not acceptable, then it should stay the order and undertake a proper rulemaking, like it should have done from the beginning.

Some SBR's have commented that they should be allowed to make arrangements with neutral billing clearinghouses to handle reporting and compensation arrangements on their behalf? Sprint agrees with those commenters that clearinghouse arrangements are an obviously sensible approach to payphone compensation and should be encouraged. However, as long as FCC rules require PSP's to agree to such arrangements, this would be administratively impossible for Sprint unless all PSP's agree to direct compensation from a particular SBR. For a clearinghouse option to work, the FCC should modify the order to compel PSP's to accept clearinghouse arrangements for reporting and paying for dial-

¹⁹ Order at ¶ 17; First Payphone Order, 11 FCC Rcd. at 20,590-91.

²⁰ One of the largest PSP aggregators, APCC, endorses giving IXC's this "flexibility to choose" the best way to handle tracking and payment obligations. APCC notes that resellers will send their business to an IXC that develops the most "cost-effective" approach. APCC Comments at 2. Ironically, APCC previously was among the biggest proponents of the New Rules. The fact that APCC now recognizes a need for further revisions – and a need for flexibility to disregard aspects of them – shows how irrational it is to place these responsibilities on the IXC's. These problems could have been avoided if the Commission had undertaken a proper notice and comment rulemaking.

²¹ E.g., IPCA Comments at 9-10; Telstar Comments at 19-22; IDT Comments at 19-20.

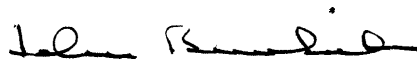
around calls. Moreover, if SBRs choose to adopt a clearinghouse approach, the New Rules should also be modified to remove all payphone compensation and tracking obligation from the underlying IXC with respect to such SBRs. The IXC should not be acting as a guarantor of payment, nor be stuck in the middle between feuding SBRs and PSPs.

Conclusion

Sprint reiterates that the New Rules are invalid and should be stayed pending judicial review or a new rulemaking. If the Commission goes forward nevertheless, then it should not constrain the IXCs' ability to pass their costs onto their SBRs. Nor should it constrain the IXCs from insisting that SBRs that wish to compensate PSPs directly enter into such arrangements with all PSPs. However, the Commission should consider modifying the New Rules to provide that an SBR may utilize a third-party clearinghouse to handle its dial-around tracking, reporting, and compensation obligations; that where an SBR does so, all PSPs must accept the arrangement; and that such arrangements shall remove all tracking, reporting, and compensation obligations for IXCs with respect to such SBR.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document in CC Docket No. 96-128, NSD File No. L-99-34, was sent by United States First-Class mail, postage prepaid, and/or electronic mail on this the 22nd day of October, 2001 to the following parties.


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